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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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COMMUNICATIONS SECTION
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

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CC Docket No. 92-77

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Billed Party Preference
for 0+ InterLATA Calls

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REPLY COMMENTS OF
VALUE-ADDED COMMUNICATIONS, INC.

Value-Added Communications, Inc. (hereinafter "VAC"), through its Senior Vice President and General Counsel, hereby replies to the comments filed by a number of parties in the above-captioned matter. As with its original comments, VAC's replies focus on its opposition to the inclusion of inmate phone services in Billed Party Preference.

INTRODUCTION

As a provider of automated inmate phone services and the manufacturer of such equipment, VAC has been a significant contributor to the development of the inmate phone business over the past five years. Arguments submitted by VAC in opposition to BPP for inmate phone services have been summarily reduced to two components: 1) BPP will reduce control over inmate call functions, uncollectibles, and fraud; and 2) BPP will reduce commissions. It is clear that these arguments are too far-reaching to be summarized in such a diminutive fashion. The arguments of such "nay-sayers" as Southwestern Bell ("SWB") and the Public Utility Law Project of New York ("PULP") ignore the fact that the application of BPP to inmate phone services is tantamount a serious departure from historical Commission policy, a complete

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disregard for the current status of inmate phone service product development, and a denial of the fact that the majority of inmate phone service contracts demand dominant carrier rates. VAC's reply to these assertions are as follows:

PULP'S ARGUMENTS FOR BPP

End-user Pricing

Several proponents of the inclusion of Inmate Phone Services with Billed Party Preference indicate that rates are the primary reason for their support. As indicated in VAC's original comments, the evidence for this assertion is purely anecdotal and does not represent the industry as a whole. In particular, PULP asserts that inmate phone calls are charged at "premium rates (compared to direct dial calls)..."¹ This comparison is based on an assumption that because a live operator does not place the call, a per call charge for the collect call is not warranted. This is clearly the opinion of an organization that has not investigated the nature of the business for which they aim to direct policy. Specifically, it takes specialized equipment to provide the automated call process and the carrier must pay to identify the called party and have billing generated on their behalf. These costs quite simply don't exist for a direct dialed call. Most importantly, when an apples for apples comparison is conducted, rates are within a reasonable margin of dominant carrier rates. Larger, more recognizable carriers such as AT&T, MCI, Sprint, and the LECs also utilize automated operator services and yet they too charge a per call operator fee. Access to these carriers would not eliminate the application of this fee or the use of automated operator services, and would not achieve the goal sought by PULP. As such, the comparison of direct dialed rates with collect call rates is without merit.

¹ Comments of The Public Utility Law Project of New York, Inc., Page 7

Assertion of Monopolistic Practices

PULP's comments contend that the lack of access to other carriers in correctional facilities is tantamount to a monopoly service. This assertion completely ignores that the calling party in this instance is an inmate. Inmates do not have a choice of accommodations, nor can they select their preferred food service provider, nor can they elect to purchase personal items from another vendor other than their prison's commissary. Because these individuals are incarcerated, the right to select their provider of choice becomes the responsibility of Prison Administrators as a matter of security. The compelling need to control the inmate calling privilege becomes paramount for the benefit of the public which includes not only inmate families, but victims, jurors, and consumers who pay for fraud generated by inmate calling schemes initiated from uncontrolled calling systems.

PULP's arguments depict inmate families as individuals without any control over the cost of these calls. This assertion is completely false. It is the inmate family member's voices that have created competition amongst providers by alerting prison officials when rates are too high and when service is inadequate. Based on VAC's experience, the concerns of inmate families are a major factor when they sit down to prepare a Request for Proposals. The result is a significant majority of inmate phone service contracts being won by carriers who charge rates in line with dominant carrier tariffs. Further, any carrier whose service results in a large number of legitimate complaints by inmate families will be quickly removed by facility administrators who can ill-afford to spend their time handling complaints that could be avoided. The evidence of this fact can be seen in the declining market presence of carriers that historically took advantage of their captive audience by charging excessive rates.

More importantly, someone must accept the call in order to be charged for the call. As with all consumers, it is essential that some responsibility is taken to control costs by managing this service. This is the case regardless of whether Billed Party Preference is in place or not. It is incumbent upon the called party to keep their inmate phone call expenditures to a manageable level. Where many states, including the NY DOC offer a generous inmate phone privileges with relatively unlimited calling, other state DOCs allow inmate's only one call per month and take no commission for the call revenues. However, the added benefit comes with a certain level of responsibility for the charges generated. The need for inmate families to do just that has caused VAC to create several features which actually help inmate families to manage the cost: 1) a feature which limits the number of times a day that an inmate can call any given number; and 2) a feature which allows called parties to set a "spending limit" on their VAC account. Thus, it is difficult to understand PULP's assumption that the called party has no rights or control over the collect calling services.

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PULP's comments essentially indicate that: a) inmate families are too poor to pay for phone calls; b) inmate families should not be further hurt by the actions of their incarcerated family member. PULP indicates that families should not have to pay for services they can ill-afford and much attention is given to the indigent status of most inmate families - referring to the call charges as a special tax on these individuals. In essence, PULP's comments amount to a compelling argument for government-subsidized inmate phone calling, an issue far beyond the scope and jurisdiction of the Federal Communications Commission.

#### **SOUTHWESTERN BELL'S COMMENTS**

### End-User Rates

As with PULP, SWB has not provided any significant information to support the assertion that the preponderance of inmate phone rates are excessive. Further, SWB indicates that the lack of called party choice prevents them from using LEC calling plans "...and thus would not receive the full savings to which the billed party had subscribed." This argument is both false and irrelevant to this proceeding. Any traffic carried by the LEC would be intraLATA or local collect calls. As such, the routing of these calls is not covered by BPP and may or may not be adopted by State regulatory agencies. Secondly, the LEC's so-called "calling plans" do not generally include collect calls, but are limited to calling card and direct dialed calls. Further, PULP clearly defined the demographics of the average inmate family as indigent. It is therefore likely that many are on subsidized "universal life line" local phone service packages, and are unlikely to be subscribers to "calling plans" that would increase their monthly cost of service.

### Loss of Control, Loss of Commissions

SWB also contends that the argument against BPP due to the loss of control over inmate phone calling is a "red herring."<sup>2</sup> Without any supporting proof or documentation, the LEC indicates that no control will be lost. Competition in this market niche was initiated because LEC and dominant carrier technology could not provide adequate control over inmate calling. Harassing calls to victims and jurors were all but unavoidable, stronger inmates could exert their own form of control over phone use, three-way calling fraud was rampant, live operators were duped into placing calls that resulted in charges to the facilities, and all profits went to support the dominant carrier's guaranteed rate of return. Since that time, rates for long distance charges (including operator assisted charges) have decreased overall, even the most basic inmate phone

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<sup>2</sup> Southwestern Bell Comments at page 15.

systems provide call blocking and call duration control, and the latest technologies provide for three-way calling and other fraud prevention. More importantly, the new competitors have forced the dominant carriers to step up to the plate in terms of technology. If the guaranteed revenue stream associated with such contracts is eliminated, there will be no financial incentive to provide this type of on-site equipment and controls will be relegated to the central office capabilities of every carrier in business. The effectiveness of a coordinated effort between all operator service providers and LECs to manage these services as effectively as current systems do is improbable if not impossible. Worse yet, the creation of a bureaucracy to control such an effort will add untold millions to the cost of doing business for all inmate phone service providers. The result will ultimately be the loss of control, the loss of commissions, and increased rates due to hampered competition, and increased administrative costs.

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SWB's comments are certainly tempered by the fact that the advent of BPP would surely result in the re-monopolization of intraLATA and local collect traffic from correctional facilities. Once the financial incentive to provide on-premise equipment is lost, facilities will resort to a standard pay phone service where intraLATA and local collect traffic will reach the LEC by default. Whatever ground will be gained on the interLATA side will be lost on the intraLATA traffic as it once again becomes the exclusive domain of the LEC.

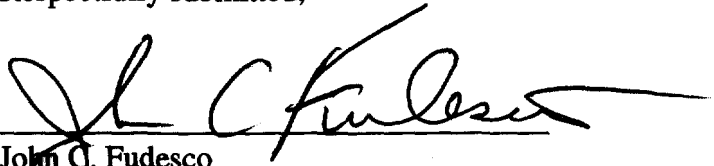
CONCLUSION

VAC submits that Billed Party Preference, if adopted, should not be extended to inmate phone services. Arguments to the contrary ignore the robust competition for inmate phone services that exists today and the irreparable damage that would surely result from the

implementation of BPP. Comments of SWB and PULP seek to minimize both the costs and effects of this action in an effort to reach their desired goal, when, in fact, the effect of BPP would ultimately come full circle and increase the cost to end users by adding significantly to the cost of providing service and effectively eliminating competition.

Respectfully submitted,

BY:



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